



It's The Law

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“Subawards or Contracts - More Than Just A Name”

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Shakespeare wrote that “a rose by any other name would smell as sweet.” Call yourself a petunia when you are really a rose, and though you would smell sweet either way, you nonetheless continue to have thorns.

The same principle holds true for subrecipients and contractors under Federal financial assistance awards. Call yourself a contractor when you are really a subrecipient, and you may be subject to disallowed costs at audit. Call yourself a subrecipient when you are really a contractor, and you may subject yourself to an unnecessary financial audit. Either way, the audit will undoubtedly produce a thorn in your side.

Federal financial assistance recipients frequently turn to subrecipients and contractors (often mistakenly called “subcontractors”) to help fulfill their statements of work. Regrettably, recipients often impose the wrong legal requirements – a contract when a subaward is appropriate, or vice versa. Grant program and administrative officials often allow the wrong terminology to be used in award documents, leading to further confusion. At times this confusion results in

undesirable consequences. When auditors review such projects, disallowed costs that may result can be devastating to a recipient. Sometimes auditors are confused as well, resulting in convoluted appeals.

Thus, it is important for financial assistance professionals to understand: What is the difference between a contractor and a subrecipient? What requirements apply to subrecipients, and what requirements apply to contractors?

What is the difference between a subrecipient and a contractor?

In short, a subrecipient is involved in financial assistance activities, and a contractor is involved in procurement.

Through the recipient, a subrecipient performs work to accomplish a public purpose authorized by law. *Compare to* 31 USC §6303-04; *see also* 15 CFR §14.25(c)(8). In other words, a subrecipient performs substantive work on an award project.

A contractor, in contrast, does not seek to accomplish a public benefit, and does